

Application No. 09/934178
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Amendment
Attorney Docket No. S63.2N-5605-US05

Remarks

This Amendment After Final and Request for Continued Examination is in response to the Office Action dated June 7, 2006 as well as the Advisory Action dated August 17, 2006. In the aforementioned official actions, the specification has been objected to; claims 17-20 are objected to; and claims 9-20 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. 5,902,317 to Klesbinski et al (Kleshinski).

The following comments are presented in the same order and with paragraph headings corresponding to the Final Office Action, with additional comments directed to the Advisory Action.

Specification

In the Final Office Action the specification was objected to as failing to provide proper antecedent basis for the claimed subject matter under 37 CFR 1.75(d)(1).

Applicants have clearly met the requirements of 37 CFR 1.75(d)(1) in that the meaning of the claim terms "peak", "valley" or "trough", are all ascertainable by reference to the description. In order to more efficiently present the present Application for Appeal however, Applicants have amended the specification to provide direct recitation of the claimed terms, which are both apparent and fully supported by the figures. In light of the amendment, Applicants respectfully request withdrawal of the objection.

Claim Objections

In the Final Office Action claims 17-20 were objected to. As indicated above, objected to terms such as peaks and troughs are fully supported by the original disclosure. The specification has however, been amended in the manner suggested in the Advisory Action. No new matter has been added. Withdrawal of the objection is requested.

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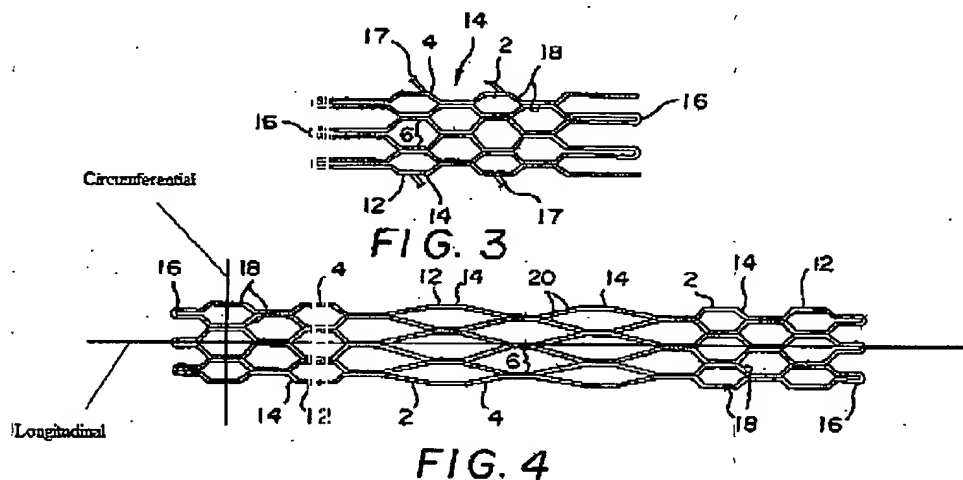
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Claim Rejections – 35 USC §102

In the Final Office Action claims 9-20 were rejected under §102(e) as being anticipated by Kleshinski.

Instant claims 9 and 16 both describe a stent wherein a plurality of cells, each of which have first and second ends that are offset in a circumferential direction. The Examiner in both the Final Office Action as well as in the Advisory Action asserts “that the ends of the cells are offset in a circumferential direction when that direction is taken along the circumference of the cells.” [sic] Applicants remain unclear how this interpretation of Kleshinski results in first and second ends that are offset in a circumferential direction. Applicants have repeatedly asserted as well as illustrated that when the opposing ends of ANY given cell of Kleshinski are viewed there is no circumferential offset whether viewing the stent as a whole or looking solely to the circumference of the cells. The ends of the cells in any view are most clearly circumferentially aligned. The figures of Kleshinski fully illustrate this as shown in the following annotated example:



For at least these reasons Applicants assert that Kleshinski fails to teach or suggest all of the elements of the instant claims.

In addition to the above, it is noted that in the Advisory Action of August 17, 2006 the Examiner asserted that the Applicants' assertion regarding the Examiner's interpretation of Kleshinski as being unclear was somehow “untimely” and that the arguments

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presented in the Response of August 7, 2006 were "mostly a rehash" of arguments presented previously. In response, Applicants respectfully direct the Examiner's attention to the Amendment dated March 7, 2006, wherein Applicants stated that they were "unclear how the Examiner concludes that the ends of the cells of Kleshinski are circumferentially offset". Despite the Applicants' clear statement that the Examiner's position was unclear, in the Final Office Action of June 7, 2006 the Examiner repeated exactly the same assertion ("that the ends of the cells are offset in a circumferential direction when that direction is take along the circumference of the cells." [sic]). Applicants, in the Response After Final, dated August 7, 2006 again *repeated* that they were unclear as to how the Examiner was coming to the conclusion he has continued to repeat. Moreover, in this same response, Applicants, rather than presenting a "rehash" of previous arguments included the above annotated figures (with circumferential and longitudinal axes provided) in an attempt to aid the Examiner in understanding the Applicants' reasonable interpretation of the phrase "circumferentially offset" as applied to the Kleshinski reference.

Thus, it is Applicants view that the comments submitted to the Examiner for consideration have been both timely and fully responsive.

Lastly, in regard to the Examiner's statement that Applicants are not using the term "offset" in the broadest reasonable interpretation possible, Applicants' request that the Examiner explain further the interpretation he seeks to impose, so that Applicants may prepare a response and/or amendment accordingly. To wit, the Examiner has provided the following definitions of "offset":

- 1) "something counter balancing something else"
- 2) "something set apart"
- 3) "set back"

Under any of these interpretations Applicants are unable to determine what aspect of the ends of the cells of Kleshinski are considered to be "circumferentially offset" as recited in the instant claims.

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Conclusion

Claims 9-20 are believed to be in condition for allowance. Withdrawal of the objections and rejections is requested.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

Date: September 5, 2006

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